

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1075-2014  
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V :  
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DANTE WASHINGTON : JURY TRIAL

TRANSCRIPT OF PROCEEDINGS  
TESTIMONY OF NATHANIEL ADAMS

BEFORE : Nancy L. Butts, President Judge

DATE : December 15, 2016; 8:54 a.m.

PLACE : Courtroom No. 1  
Lycoming County Courthouse  
Williamsport, PA 17701

APPEARANCES:

MARTIN L. WADE, ESQUIRE  
KENNETH OSOKOW, ESQUIRE  
Lycoming County Courthouse  
Williamsport, Pennsylvania, 17701  
FOR - COMMONWEALTH

WILLIAM J. MIELE, ESQUIRE  
NICOLE J. SPRING, ESQUIRE  
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Williamsport, Pennsylvania, 17701  
FOR - DEFENDANT

Reported and Transcribed by:  
Camala Jordan  
Official Court Reporter

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18 Pa.C.S.A., Section 392(b), Theft of Services.

CAMALA JORDAN  
OFFICIAL COURT REPORTER, LYCOMING COUNTY

1 we're taking. Currently we're using GENSCAN and  
2 Genotyper. There's a variety of versions for that. Two  
3 versions of GeneMapper. We are looking into GeneMarker.  
4 So what are we up to? Six different versions of software.  
5 We have a custom homemade version of a program called  
6 Genofiler. For statistical analysis we have sort of a  
7 desktop calculator specific to forensics DNA called  
8 GenoCAD. In addition to Microsoft Office, you know, Word  
9 and Excel for -- for calculations and report writing.  
10 Depending on the case at hand if there was a probabilistic  
11 system we might use one of those systems depending on what  
12 questions have been asked of us and what we're interested  
13 in doing. So I've personally used maybe seven or eight of  
14 the 12 different probabilistic genotyping software  
15 programs Dr. Perlin described as on the market currently.

16 Q Are there -- are there individuals that send you  
17 DNA to be tested?

18 A Physical samples?

19 Q Yes.

20 A No.

21 Q You usually receive data?

22 A We don't have testing capabilities at our office.

23 Q Okay. So you don't have the equipment on site  
24 that would be used for actually extracting, amplifying  
25 DNA from human samples?

1 A That's correct.

2 Q Nor do you advertise yourselves as being able to  
3 do that?

4 A No. We -- anybody who calls inquiring about that,  
5 we'll refer them to a lab who does that and has that  
6 capability.

7 Q Have you written any publications in your area of  
8 expertise?

9 A In terms of journal articles I haven't had any  
10 journal articles published. I have written some. There's  
11 one that will hopefully be coming out in a couple months.  
12 That is not a peer reviewed journal.

13 Q Have you contributed to any other publications  
14 like books, anything like that?

15 A I haven't authored any book chapters.

16 Q Have you ever worked in a lab that does DNA  
17 analysis?

18 A Forensic DNA analysis?

19 Q Yes, sir.

20 A Not forensic DNA analysis. I worked in a medical  
21 lab for a while.

22 Q What was the nature of your college curriculum as  
23 it relates to the hard sciences such as biology,  
24 chemistry, biochemistry?

25 A As in the courses that I took in the past during

1 college?

2 Q Yes, sir.

3 A So the requirements for a computer science degree  
4 at Wright State required a year of what we would consider  
5 hard laboratory science. That would be general chemistry  
6 or general biology. I took general chemistry. I took  
7 advanced physics in high school, but none at the college  
8 level. I took a course in biochemistry. I have a course  
9 in genetics. Several courses in bioinformatics, that's  
10 the integration of computing and applying the principle of  
11 computer science specifically to biological data. I said  
12 general chemistry, genetics. Anatomy, physiology I took a  
13 year of. And most of my other courses have been specific  
14 to computer science or other general educational  
15 requirements.

16 Q Okay. Thank you. Have you ever reported on  
17 forensic DNA evidence in a criminal case?

18 A What do you mean reported on?

19 Q Reported the results of an analysis that's done  
20 using a computer program instead of DNA data?

21 A I don't believe I've authored, signed any  
22 statements providing statistical weights to a Court.

23 Q What type of statistics and mathematics classes  
24 did you take in college?

25 A I took a statistics course and then a number of my

1 computer science courses involved different types  
2 statistical analysis.

3 Q What was the statistics course that you took?

4 A I don't recall the name of it. It was the one  
5 that's required for engineers.

6 Q Okay. Are you -- how familiar are you with the  
7 mathematical undercarriage -- underpinnings of TrueAllele  
8 software?

9 A What do you mean how familiar? I mean, I know  
10 their equations of the difficult questions that qualify.

11 Q Well, are you familiar with the type of  
12 mathematics that is utilized by TrueAllele to do what it  
13 does?

14 A Both Bayesian Statistics and the computing  
15 algorithms known as Markov Chain Monte Carlo. Yes, I'm  
16 familiar with those.

17 Q Okay. Have you taken classes in those areas?

18 A I'm not aware of classes specific to Markov Chain  
19 Monte Carlo. I'm not even aware of classes that are --  
20 are simply Bayesian Statistics, but I haven't taken any  
21 courses exclusive to those.

22 Q Was your -- your knowledge in those areas from  
23 your own independent study?

24 A Some of it, yes. Some of it's from coursework as  
25 well.

1 Q The -- the term probabilistic genotyping came up  
2 during your direct. What training have you had in the  
3 area of probabilistic genotyping?

4 A Back in -- in 2014 -- the spring of 2014 was when  
5 my personal and professional interest really turned toward  
6 probabilistic genotyping from the more general, what we  
7 would say as traditional DNA analyst. That summer I was  
8 able to attend a week long workshop held by the Midwest  
9 Association of Forensic Sciences. They're a regional  
10 professional organization for forensic scientists. And  
11 they exhibited one probabilistic genotyping program per  
12 day for a week so I attended those, the last day being a  
13 presentation of TrueAllele where I saw Dr. Perlin speak  
14 via webinar or webcam, whatever you call that. And since  
15 then we've been conducting -- at work through my company  
16 we've been conducting ongoing trainings on the various  
17 systems and watching webinars ourself. We're in Dayton,  
18 Ohio it's not a hot bed of conferences that people come  
19 from out of town so we have to attend meetings in Orlando,  
20 New York, Chicago, Seattle, those places to attend ongoing  
21 trainings and conferences.

22 Q Have you been attending those conferences?

23 A I've been attending several conferences and  
24 workshops per year since I started.

25 Q On probabilistic genotyping?

1           A     They include that. Some of the conferences are  
2 more specific to probabilistic genotyping. Some are  
3 included as a -- one of the bullet points that they  
4 address.

5           Q     Can you tell me about the specific ones and where  
6 they were?

7           A     Well, starting with the week in St. Louis in 2014.  
8 There have been a number of workshops and conferences  
9 where speakers have gone for anywhere in between 10  
10 minutes and several hours discussing the application of  
11 probabilistic genotyping to specific data in a case, the  
12 development or the design of a particular system, the  
13 transparency of a system, the comparison of two different  
14 systems or more. There have been a series of webinars put  
15 on by the National Institute of Standards and Technology  
16 including comparison studies between multiple systems. I  
17 don't recall the dates of watching those, but on my CV  
18 there's the dates where I've attended these -- these  
19 various workshops. Probabilistic genotyping is -- is a  
20 very interesting topic to many people in the field of  
21 forensic DNA and is gaining rapid interest at the same  
22 time. It's --

23           Q     Do you have a copy of your CV?

24                     MR. MIELE: I sent a copy. Here.

25                     THE COURT: And I have it marked as Defendant's

1 18.

2 MR. MIELE: Yes, Your Honor.

3 THE WITNESS: It would be fair to say that  
4 at --

5 BY MR. WADE:

6 Q Hold on a second. I haven't asked a question yet.

7 A I was continuing to explain where I've been  
8 exposed to probabilistic genotyping.

9 Q Oh. Continue. My mistake.

10 A It would be fair to say that -- that on all of  
11 those continuing education meetings at least a portion of  
12 the time has been devoted to discussion of probabilistic  
13 genotyping systems. At least since 2014.

14 Q Okay. Have you yourself written or attempted to  
15 write a computer program that can interpret DNA mixture  
16 evidence?

17 A Interpret? In terms of reporting out a conclusion  
18 that human -- as opposed to a human reporting out that  
19 conclusion, I have not. It's actually a frequent term of  
20 nondisclosure agreements and Court Orders that I've been  
21 signing that swear to that so I'm actually inhibited a  
22 little bit as to how much development I could do if I were  
23 inclined.

24 Q And, I'm sorry, when you testified in Seattle were  
25 you qualified as an expert?



1           A     I'm not very familiar with the legal process of  
2     qualifying someone as an expert. I don't recall anybody  
3     saying, you're now qualified as an expert.

4           Q     So you've never been qualified as an expert?

5           A     I don't recall -- I don't recall it.

6                     MR. WADE: What was the offer?

7                     THE COURT: As an expert in DNA data and  
8     analysis.

9                     MR. MIELE: Judge, I think it was data analysis  
10    without the and.

11                    THE COURT: Oh.

12                    MR. MIELE: Sorry.

13                    THE COURT: Maybe there was pause in your speak  
14    and that's why I took an and.

15                    MR. WADE: I'm going to object. I believe the  
16    offer's a little bit too broad.

17                    THE COURT: Okay. Why don't we come up to  
18    sidebar and we'll talk about it. Okay, ladies and  
19    gentlemen, if you want to distract yourself from what  
20    we're talking about.

21                    (Whereupon, the following discussion was held  
22    between the Court and counsel at sidebar:)

23                    THE COURT: Mr. Wade, you objected at this  
24    point to this witness?

25                    MR. WADE: Yeah. As far as I can tell the only

1 different way?

2 MR. WADE: I mean, I'm opposed to a  
3 qualification in the area of statistics. He's taken one  
4 college course, statistics for engineers.

5 MR. MIELE: He's been doing it for four years.  
6 He's worked on a dozen cases --

7 THE COURT: Well --

8 MR. MIELE: -- in which Perlin has been  
9 involved, dozen to two dozen cases Perlin's been involved.

10 THE COURT: And what happened with those cases?

11 MR. MIELE: I didn't ask the results. I don't  
12 know the results.

13 THE COURT: Because I --

14 MR. MIELE: A lot of them probably go toward  
15 admissibility also.

16 THE COURT: Of the doctor's results?

17 MR. MIELE: Of the doctor's program whether  
18 it's admissible.

19 THE COURT: Then it wouldn't be in Pennsylvania  
20 because it is admissible.

21 MR. MIELE: Outside of Pennsylvania.

22 MR. WADE: I mean, if the word genotype comes  
23 out of his mouth, I'm objecting. He doesn't know what a  
24 genotype is.

25 MR. MIELE: Yes, he does.

1 MR. WADE: He's not qualified to even talk  
2 about it.

3 THE COURT: But he doesn't have the  
4 background --

5 MR. MIELE: Yeah, he does.

6 THE COURT: -- to be able to talk about that  
7 and much of the information he's provided any more than I  
8 would based upon my training and my experience. I'm not  
9 hearing from his testimony -- I mean, I'm reading  
10 testimony by expert witnesses from the rules. I'm just  
11 trying to make sure it's apples and apples here.

12 MR. MIELE: It is apples to apples in the sense  
13 that we're talking about his results. We're not talking  
14 about the DNA. We don't care what the DNA results -- that  
15 the loci is seven and 11. No one cares about how they got  
16 there. We accept all that as true. 7,11 is 2.3 percent.  
17 Okay. The next one is whatever that is. Statistically,  
18 what does that result in? How does that result? Does  
19 that result in what Perlin's saying? Is there another way  
20 to look at that? The probability -- what is the  
21 probability of Washington's DNA is in fact there? What is  
22 it? Perlin says it's a worthless number. He was asked  
23 that. It's a worthless number. We're going to say it's  
24 not a worthless number. This is how it's calculated.  
25 We're not challenging DNA. There's nothing biological

1 about this other than you use the terms, allele, loci,  
2 locus, and those types of things. Use the terms.

3 THE COURT: Put it into context.

4 MR. MIELE: Put it into context otherwise --

5 THE COURT: Okay.

6 MR. WADE: DNA is expressed in terms of  
7 statistics and to give a statistic about DNA is to present  
8 yourself -- you have to have a certain background to even  
9 understand how DNA can be expressed as a statistic. He  
10 doesn't have it. He can critique what this guy has done,  
11 but ultimately he doesn't have the educational training  
12 and experience to even be able to articulate to them how a  
13 biological sample can result in a statistic. I don't  
14 think he gets to start off --

15 THE COURT: But I don't think that he's been  
16 asked that question.

17 MR. WADE: It's in his report.

18 THE COURT: Well -- and I know that.

19 MR. WADE: So --

20 THE COURT: But I haven't heard the questions  
21 that are being asked and that's why I'm saying what I'm  
22 saying is I don't think he is able to be qualified to be  
23 testifying as an expert in that.

24 MR. MIELE: To what, Judge?

25 THE COURT: To exactly what Mr. Wade just said,

1       which is translating into DNA -- how did you say that? I  
2       don't want to misspeak.

3               MR. WADE: Well, I mean -- explain --

4               THE COURT: Translate --

5               MR. WADE: Explaining how DNA data can be  
6       translated is statistics. That's the meaning of it.

7               THE COURT: You just want the numbers?

8               MR. MIELE: We can't explain how DNA data can  
9       be translated. We're not talking science. We're not  
10      talking DNA, biology. We're talking about the statistics  
11      of it.

12              THE COURT: But the problem is you have to know  
13      something about DNA to be able to calculate a result that  
14      says this person can be excluded as a parent of this child  
15      or this person can be excluded --

16              MR. MIELE: We're not saying that. He's saying  
17      what the percentages are. If the percentages are right.  
18      What's the probability of Washington's results? We're  
19      accepting at face value what the DNA results are.

20              THE COURT: So -- so your --

21              MR. MIELE: We're not challenging any of that.

22              THE COURT: You're not challenging the data  
23      that was realized by the State Police --

24              MR. MIELE: Correct.

25              THE COURT: -- or by Sorenson?

1 MR. MIELE: That is what it is.

2 THE COURT: The raw data.

3 MR. MIELE: He doesn't -- he doesn't care about  
4 the raw data and Dr. Perlin doesn't care about the raw  
5 data. He cares about the statistical results.

6 MR. WADE: Maybe I can give some examples of  
7 where we're going to run into some serious problems almost  
8 immediately. One of the areas he talks about in his  
9 report -- in his -- in the middle of his report is the  
10 idea of dropout and how statistics can be altered by the  
11 phenomenal dropout, which is something that happens in DNA  
12 in the molecular level and results in an absent peak from  
13 the data set. He's not qualified to talk about that. I'm  
14 going to object, you know.

15 MR. MIELE: Object.

16 THE COURT: I would agree with that.

17 MR. WADE: But that's -- that's -- we're  
18 talking -- we're going through his report now.

19 THE COURT: DNA data analysis.

20 MR. MIELE: Yes.

21 MR. WADE: And he says, due to this thing about  
22 dropout -- this thing and this thing, the system's  
23 unreliable and the results are unreliable. So --

24 MR. MIELE: We're talking about reliability.

25 THE COURT: But that's your offer for him is

1 DNA data analysis. And for him to be able to make that  
2 statement, he doesn't -- he hasn't presented testimony  
3 that I heard that would qualify him to be able to make  
4 that statement.

5 MR. MIELE: We're not going after the  
6 reliability and we're not going after the DNA, it's  
7 statistics. It's the analysis of a statistical review of  
8 results of the alleles, loci, and such.

9 THE COURT: Well, I guess the first I feel  
10 comfortable in giving him expertise in is computer  
11 science. I mean, that's the general description of what  
12 he's describing and the use of computers and calculating  
13 statistics.

14 MR. MIELE: And applying it to the DNA results?

15 THE COURT: And applying it to probabilities,  
16 but -- see, when you say DNA results, then we run into the  
17 issue that Mr. Wade --

18 MR. MIELE: Not the scientific side of it.

19 THE COURT: Correct. That's -- but that's why  
20 I'm reluctant to extend it to the DNA because he can't --

21 MR. WADE: You don't know what a loci is  
22 because you've never seen one because you've never done  
23 DNA testing. You're talking about things you've read  
24 about and workshops.

25 MR. MIELE: That's how people become qualified.

1 You don't have to -- you don't have to test the loci to  
2 become qualified to talk about it.

3 THE COURT: You don't, but you have to work  
4 with --

5 MR. WADE: Our guy did.

6 MR. MIELE: Have to do what?

7 THE COURT: Have to work with and have a  
8 reasonable pretension of what knowledge --

9 MR. MIELE: He does. He does. Again, he has  
10 been doing this for four years, he's reviewed a dozen to  
11 two dozen TrueAllele reports and has testified on the  
12 reports on those challenging what Dr. Perlin does.

13 THE COURT: And that's why I'm saying the  
14 number part of it -- if it's just purely a number issue,  
15 then --

16 MR. MIELE: It probably is.

17 THE COURT: Then I would give him that leeway.  
18 But if it comes to making a conclusion about why  
19 certain -- like he said, the example of dropout and why  
20 you get certain results.

21 MR. MIELE: I don't think we can do that.

22 MR. WADE: I mean, yeah. I'm just wondering  
23 what in the report are we going to cover --

24 THE COURT: Well, then I guess --

25 MR. WADE: -- if we're not going to cover that.



1 THE COURT: That would be one area that he  
2 wouldn't be able to cover. You can't make statements like  
3 that because I wouldn't certify him as an expert in that  
4 and I'm not sure how to describe what it is --

5 MR. WADE: Here's another example. He's going  
6 to talk about the difficulty in estimating the numbers of  
7 contributors in the DNA mixture. He doesn't know -- he's  
8 not qualified to talk about how you estimate the number of  
9 contributors. He's never done it. He doesn't know how it  
10 works.

11 THE COURT: And I'm believing you have to have  
12 more experience than just reading about it to understand  
13 how to do that.

14 MR. MIELE: You have to actually do the testing  
15 yourself?

16 THE COURT: Or at least observe it. At least  
17 work with a lab.

18 MR. MIELE: I disagree with the Court. I  
19 disagree. I think an expert can inquire to the knowledge  
20 by any means including study and not --

21 THE COURT: I'm not saying had to do it. But  
22 he can at least observe it by people that know how to do  
23 it.

24 MR. MIELE: I guess I don't agree.

25 THE COURT: Because what if he's reading

1 articles that aren't peer reviewed and he's learning  
2 something that isn't approved in the -- in the scientific  
3 community? That's -- that's the issue.

4 MR. MIELE: I disagree with the Court.

5 THE COURT: He's talking about his writings --  
6 not peer review journals. I mean, I'm willing to give you  
7 the mathematical statistical part of it, but I'm -- I'm  
8 concerned about the -- how far after reading his report  
9 and hearing the objection, how far he can get. So that --  
10 that's where -- so I don't know how you want me to  
11 characterize that. That's -- that's what I feel  
12 comfortable doing is I'll give him as an expert in  
13 computer science and statistics, but with respect to his  
14 reasonable pretension of knowledge in the area of DNA, no.  
15 he doesn't have that.

16 MR. MIELE: It depends on what you're saying is  
17 knowledge in DNA.

18 THE COURT: Because I don't know where you're  
19 going with it.

20 MR. MIELE: Biological is in DNA.

21 THE COURT: Correct.

22 MR. MIELE: We're not going there. We're not  
23 going to talk about their DNA -- that chart that Perlin  
24 put on.

25 THE COURT: Well -- but that's not what the

1 report gives me the impression so that's why I have to  
2 wait --

3 MR. MIELE: It also talks about --

4 THE COURT: -- and see.

5 MR. MIELE: He also talks about he doesn't know  
6 where Perlin comes up with these numbers, he talks about  
7 in his report where there are numbers not reported.

8 THE COURT: But then if you've got raw data and  
9 you're pointing to the raw data, he certainly can do that.

10 MR. MIELE: Which is --

11 THE COURT: Right.

12 MR. MIELE: Yes.

13 THE COURT: Right.

14 MR. MIELE: That's where we're going to.

15 THE COURT: So that's -- that's where I'm  
16 coming from. Computer science.

17 MR. MIELE: And statistics is what you said.

18 THE COURT: Statistics, but not DNA data --

19 MR. MIELE: Okay.

20 THE COURT: -- analysis.

21 MR. MIELE: Okay. We object, but so be it.

22 THE COURT: Well --

23 (Whereupon, the discussion held at sidebar  
24 between the Court and counsel was concluded.)

25 THE COURT: Thank you. Okay. The objection is

1 overruled to the extent that the Court will allow him to  
2 testify as an expert in the area of computer science and  
3 statistics. Mr. Miele.

4 MR. MIELE: Yes, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. MIELE:

7 Q Mr. Adams, did you become involved in this case at  
8 our request?

9 A Yes.

10 Q And what material did you have provided to you to  
11 help you review the case?

12 A Originally, I believe it was a couple papers sent  
13 in PDF and then as time went on, the crux of the material  
14 that we spent time working with was the DVD provided by  
15 Cybergenetics I believe to the DA first.

16 Q And was that the disk and information that I think  
17 Dr. Perlin identified earlier today?

18 A Yes, sir. The four gigabytes he referred to.

19 Q You have in front of you I think what's been  
20 marked as Defendant's Exhibit 17, case packet. Was that  
21 also provided to you on the disk or some other way?

22 A Yes, it was on a disk.

23 Q Okay. And have you had a chance to review that?

24 A Yes, sir.

25 Q Have you had a chance to review Dr. Perlin's two

1 reports, both his preliminary report and his final report  
2 dated December 1st of 2015?

3 A Yes, sir.

4 Q What other information, if any, did you review  
5 prior to writing your report?

6 A I read the -- the standard operating procedures  
7 that were provided for the -- the TrueAllele system as  
8 well as the manual for the software so that is about four  
9 or 500 pages of manuals and materials that I recall  
10 specifically reading in this case, though I've read many  
11 of them in other cases as well.

12 Q That's what I was going to ask you. How many  
13 times previously have you read the manuals and other  
14 documents about TrueAllele provided by Cybergenetics for  
15 TrueAllele?

16 A I've been provided them several times. I don't  
17 recall how many times. I haven't seen them in every  
18 TrueAllele case involved --

19 Q This isn't the first time that you've read those  
20 manuals or seen them?

21 A It's not the first time.

22 Q Is this the first time you seen a case packet such  
23 as the one we received here?

24 A It's not the first time.

25 Q And you've had a chance to review them on other

1 to do it at sidebar?

2 MR. WADE: Sidebar please.

3 MR. MIELE: We can do it at sidebar.

4 THE COURT: Okay. Ladies and gentlemen, if you  
5 could distract yourselves from what we're talking about  
6 please.

7 (Whereupon, the following discussion was held  
8 between the Court and counsel at sidebar:)

9 THE COURT: My concern is the fact that in his  
10 expert report since his expertise has been narrowed down  
11 at this point that what he does in his conclusions he has  
12 referred to relevant literature, which does not speak to  
13 his own personal knowledge or expertise. And that's why  
14 I'm having a problem with it. It's not a statistical or  
15 non-statistical. His opinion he's basing it on is based  
16 upon knowledge that he's getting from relevant literature  
17 that speaks to this, but he doesn't have any training or  
18 experience in it. That's where I'm hung up so that's why  
19 I wanted to talk to you about it at sidebar.

20 MR. MIELE: Again, when you take a statistical  
21 analysis, you know, how does the contributors change the  
22 percentage, change his conclusions?

23 THE COURT: Because it's basing his opinion  
24 upon -- because he's basing his opinions on writings of  
25 other people and taking what they say -- they say as

1 possible as opposed to his own.

2 MR. MIELE: I think experts are allowed to rely  
3 upon the works of others. In other words --

4 THE COURT: In their own field.

5 MR. MIELE: And --

6 THE COURT: The same thing. These are what --  
7 because I haven't read everything independent in his  
8 report what I'm believing is experts in the field of  
9 biology, or DNA, or genetics, making these conclusions and  
10 he's accepting their conclusions of coming his own in the  
11 statistical area. Which based upon his expertise he  
12 doesn't have the ability to do. That's that was my  
13 concern.

14 MR. MIELE: Sure. Okay. And we object.

15 THE COURT: Well, that's why I wanted to do it  
16 at sidebar.

17 MR. WADE: I object so you rule on the  
18 objection.

19 THE COURT: And I'm sustaining the objection.

20 MR. MIELE: And I --

21 THE COURT: But place your objection to my  
22 ruling on the record.

23 MR. MIELE: Yeah. That's what -- I tried to.  
24 I'm sorry. Premature objection. We're objecting to the  
25 ruling. We think it's an appropriate area for him to talk

1 about.

2 MR. WADE: Judge, just one more thing. The  
3 last sidebar ruling wasn't announced to the jury so I  
4 don't know if they knew the outcome.

5 THE COURT: I thought it was.

6 MR. WADE: The one before and before was, but I  
7 could have a bad memory. Like I said, my brain is  
8 shutting down.

9 THE COURT: I understand. Okay. All right.

10 (Whereupon, the discussion held at sidebar  
11 between the Court and counsel was concluded.)

12 THE COURT: Okay. The objection's sustained.

13 MR. MIELE: I'm sorry, Judge. We have a  
14 witness here who has to get back to work and we're trying  
15 to deal with him and getting him back another day because  
16 obviously we're behind schedule. So I apologize for the  
17 delay.

18 THE COURT: No problem.

19 MR. MIELE: Your Honor, may we approach just to  
20 put something on the record?

21 THE COURT: Okay. Ladies and gentlemen, if you  
22 don't mind distracting yourself. I think this will be  
23 relatively brief.

24 (Whereupon, the following discussion was held  
25 between the Court counsel at sidebar:)